

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

METROPOLITAN LIFE INSURANCE COMPANY,

Plaintiff

v.

NATIONAL COMMUNICATIONS SYSTEMS,
INC., *et al.*,

Defendants

CIVIL NO.: 97-2331 (GZS)

SUPPLEMENTARY MOTION REGARDING ELECTION OF REMEDIES

TO THE HONORABLE COURT:

COME NOW defendants José A. Axtmayer *pro se*, and Altagracia Escudero, Hans H. Hertell, Marie Stubbe and their conjugal partnership through their respective undersigned counsel, and respectfully state, allege and pray as follows:

1. Defendants inadvertently omitted in their Motion to Compel Plaintiff's Election of Legal Theory dated February 27, 2004 (Dkt. no. 427), a reference to the recent decision of the Supreme Court of Puerto Rico in *Garriga v. Marbella del Caribe*, 143 D.P.R. 927 (1997). The latter evidences that Puerto Rico law prevents the coetaneous prosecution of claims for breach of contract and for unjust enrichment, and which case was cited in and the official translation thereof was attached as Exhibit A to defendants' Reply in Support of Motion for Summary Judgment dated December 17, 2003 (Dkt. No. 372).

WHEREFORE, defendants respectfully request that this Honorable Court excuse such omission and take into account the foregoing when ruling with respect to defendants' Motion to Compel Plaintiff's Election of Legal Theory.

RESPECTFULLY SUBMITTED, in San Juan, Puerto Rico, this 29th day of February 2004.

I HEREBY CERTIFY that on this same date a true and exact copy of this motion was served by first class mail to: **Jesús Cuza, Esq.**, Greenberg Traurig, PA, 401 East Las Olas Blvd., Suite 200, Ft. Lauderdale, FL 33301; **Ina M. Berlingeri Vincenty, Esq.**, Goldman Antonetti & Cordova, P O Box 70364, San Juan, Puerto Rico 00936-0364; **Harold Vicente, Esq.**, P O Box 11609, San Juan, PR 00910-1609; and **Judge George Z. Singal** through fax number 207-780-3392.

/s/ JAA
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